Enclosure

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) ***Will the Implementation of the Implementation-Ready TMDLs, in the Mid-Coast Basin Likely Result in Actions to Achieve and Maintain Water Quality Standards (WQS)?***

ODEQ has not begun to evaluate the safe-harbor Best Management Practices (BMPs) needed to achieve and maintain water quality standards. Absent these BMPs and a completed Mid-Coast IR-TMDL document, EPA and NOAA lack sufficient information to determine if the IR-TMDL approach is likely to result in actions that achieve and maintain WQS. Based on the limited information that Oregon has provided to date, we are concerned that the IR-TMDL approach might not enable the State to achieve and maintain water quality standards.

Although ODEQ has fallen short of identifying specific BMPs and completing the Mid-Coast IR-TMDL document, the State has completed some necessary preliminary steps, for example, establishing the geographic scope of the sediment IR-TMDL document and the water quality targets for the TMDLs to address turbidity and biocriteria listings. To determine the scope of sediment problems in the Mid-Coast Basin, ODEQ used PREDATOR and Stressor ID methodology to assess the biocriteria impairments caused by sediment. ODEQ then determined percent fine sediment targets associated with the biological impairments to set sediment water quality targets for biocriteria listings. EPA and NOAA believe this methodology is credible and establishes an important link between aquatic life use and water quality.

The CZMA, however, requires state agencies, like ODEQ, to develop and submit enforceable policies to achieve CZMA nonpoint source goals. ODEQ has not yet present EPA and NOAA with examples of mandatory and enforceable BMPs for the Mid-Coast IR-TMDLs that, when implemented, would result in attainment of applicable WQS. If ODEQ chooses to allow the Designated Management Agencies (DMAs) to develop the BMPs, then ODEQ needs to determine whether the BMPs submitted by the DMAs are adequate and, if not, would need to develop additional BMPs if DMA actions alone are not adequate to meet applicable WQS. The process ODEQ would use to make this assessment and potentially impose additional BMPs is not clear yet. In addition, it is not clear whether ODEQ would incorporate the DMA-developed BMPs into the TMDL document. If the BMPs are not part of the TMDL document, then the TMDLs would be more representative of traditional TMDLs, rather than IR-TMDLs and likely would not enable Oregon to satisfy its Coastal Nonpoint Program condition absent any enforceable measure to ensure that the BMPs developed outside the TMDL process in turn become enforceable.

2) ***Will Oregon's Plan for Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?***

Based on what ODEQ has presented to EPA and NOAA to date, we do not believe the current IR-TMDL approach is likely to satisfy the outstanding additional management measures for forestry condition on Oregon's Coastal Nonpoint Program. In the findings of EPA and NOAA's 1997 conditional approval for Oregon's Coastal Nonpoint Program, we noted weaknesses in the State's ability to adequately address impacts from forestroads, as well as the State's ability to protect riparian and landslide prone areas, among other issues.

Although a conceptual forest road strategy that ODEQ discussed with EPA and NOAA has the potential to satisfy those conditions, ODEQ has not to date provided a required road strategy with any measure of specificity. Key elements of a viable forest road strategy that could address outstanding concerns include, but would not be limited to:

- development of an inventory/assessment to identify where impacts from forest roads exist;
- development of a reasonable timeline for retiring or restoring forest roads that cause adverse water quality impacts;
- development of a requirement to track and report on progress to remediate identified forest road problems. Implementation principles for the tracking program could include addressing the worst road problems or highest risk categories of road problems earlier in the overall timeline as well as milestone-based targets to ensure steady progress on identified road work; and
- identification of effective BMPs for road siting, construction, operation, maintenance, abandoning, and closing to ensure road stability; drainage of road runoff back to the forest floor rather than directly to streams and other waterbodies; and adequate protection of both fish and nonfish bearing streams. This BMP identification and development effort could include establishing targets for the maximum percentage of a road network allowed to discharge directly to streams and other waterbodies, or other similar targets. This identification should include expectations for periodic monitoring or inspections: to track BMP implementation;, to determine if targets are being met;, to assess BMP effectiveness;, and to determine whether there is any need to adjust BMPs in the future.

EPA and NOAA are also concerned about Oregon's lack of progress identifying additional management measures for the protection of riparian and landslide prone areas. Oregon Department of Forestry (ODF) is not considering requirements for the protection of riparian areas around nonfish bearing streams in its current riparian rulemaking effort. It is not clear whether ODF will have developed adequate requirements for the protection of riparian areas around small and medium fish bearing streams through the ODF rulemaking process by the time EPA and NOAA have committed to make a final decision on the adequacy of Oregon's Coastal Nonpoint Program.

In addition, ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish bearing streams in the IR-TMDL effort. A significant body of science supports increases in the levels of protection afforded to riparian areas around small and medium streams in Oregon. Increased no-cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are

currently required on private forest land for similar forest types in the two adjacent coastal states, Washington and California.

Many practices are available that, in combination, could help Oregon meet the additional management measures for forestry condition by protecting riparian areas, reducing sediment loads, and addressing large wood and stream temperature issues.Those practices include, but are not limited to: buffering key segments of nonfish bearing streams that affect downstream water quality above confluences of nonfish bearing streams and fish bearing streams; buffering hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering special aquatic sites such as seeps, springs, wetlands, and beaver ponds. NOAA and EPA recommend that Oregon consider riparian protection approaches similar to those that have addressed Coastal Nonpoint Program requirements in the neighboring coastal states.

Oregon has not yet provided sufficient information regarding additional management measures for landslide prone areas. ODF already requires management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon could also consider adopting measures similar to the State of Washington's "Forests and Fish" rule provisions for protection of landslide prone areas.

A viable program for the protection of Oregon's landslide prone areas could include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors should be used in the designation. Landscape scale mapping and analysis tools (e.g., LiDAR and DEMs) could help focus risk identification and designation efforts. An array of BMPs, including no harvest and thinning at various levels to maintain root strength and reduce precipitation impacts on soils, could be required in high risk areas based on factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon also may wish to consider an option to provide flexibility for forest land owners to rely on certified geologists or engineers to develop BMP options that provide equal or greater protection than the more broadly required measures. The program that Oregon develops to address landslide prone areas needs to address an adequate protection for both fish and nonfish bearing streams.

3) Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July 26, 2010 letter to EPA and NOAA, ODEQ committed to completing actions according to the interim milestone deadlines identified by EPA and NOAA or as modified by ODEQ. The deadlines identified by EPA and NOAA include: a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for DMAs by June/July 2011. However, ODEQ has not met any of those commitments nor modified the deadlines. Although ODEQ shared with EPA and NOAA a what the State has prepared as the guidance, entitled *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* (Implementation Guidance), that draft, as EPA and NOAA notified ODEQ in our July 2012 comments, still needed additional, significant work.

While EPA and NOAA have been supportive of the potential for this Implementation Guidance approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on our review of the July 2012 draft of the Implementation Guidance, it is still unclear whether the TMDL Implementation Plans developed under this Guidance would include practices consistent with the management measure for new development identified by the federal agencies under the Coastal Zone Act Reauthorization Amendments, as well as whether ODEQ even has the authority to require implementation of the new development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). The Implementation Guidance for urban areas might not enable Oregon to satisfy the new development management measure condition.

As ODEQ finalizes the Implementation Guidance, it should provide unambiguous instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their TMDL Implementation Plans (i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The federal agencies will review the Implementation Guidance to ensure that it clearly indicates that ODEQ can ensure implementation of the new development management measure, as needed.

Based on staff communications, EPA and NOAA had understood that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the recommended new development management measure. While states may rely on voluntary approaches backed by enforceable authorities to meet their Coastal Nonpoint Program requirements (see the EPA NOAA 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 draft Implementation Guidance appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution. We urge ODEQ to resolve this apparent discrepancy.

EPA and NOAA hope ODEQ will expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the*

Coastal Nonpoint Management Area and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure, as needed, implementation of these practices. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review as soon as possible so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) *Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program*

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point-of-sale inspections for systems within the Coastal Nonpoint Program management area. EPA and NOAA applaud Oregon's progress on rule development and the fact that Oregon was on target for meeting benchmarks set out in its July 21, 2010, commitment letter. The proposed rules require all OSDSs within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The State has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point-of-sale inspections and reliance on qualified inspectors, combined with the State's detailed inspection form, should enable the State to satisfy the OSDS condition if adopted substantially as proposed.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon Environmental Quality Commission (EQC) for adoption until March 2013 to give ODEQ more time to discuss the proposed rules with several State legislators. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. If the date for final action is delayed, EPA and NOAA may lack sufficient time and opportunity to approve Oregon's Coastal Nonpoint Program by November 15, 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy the remaining OSDS condition.

Enclosure

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) ***Will the Implementation of the Implementation-Ready TMDLs, in the Mid-Coast Basin, Likely Result in Actions to Achieve and Maintain Water Quality Standards (WQS)?***

ODEQ has not begun to evaluate the safe-harbor Best Management Practices (BMPs) needed to achieve and maintain water quality standards. Absent these BMPs and a completed Mid-Coast IR-TMDL document, EPA and NOAA ~~cannot~~lack sufficient information to determine if the IR-TMDL approach is likely to result in actions that achieve and maintain WQS. ~~However, b~~Based on the limited information ~~progress~~ that Oregon has ~~been made~~provided to date, we are concerned that the IR-TMDL approach ~~would~~might not enable the ~~s~~State to achieve and maintain water quality standards.

Although ODEQ has fallen short of identifying specific BMPs and completing the Mid-Coast IR-TMDL document, the State has ~~tentatively~~ completed some necessary preliminary steps, for example, ~~it has made good progress~~ in establishing the geographic scope of the sediment IR-TMDL document and the water quality targets for the TMDLs to address turbidity and biocriteria listings. To determine the scope of sediment problems in the Mid-Coast Basin, ODEQ used PREDATOR and Stressor ID methodology to assess the biocriteria impairments caused by sediment. ODEQ then determined percent fine sediment targets associated with the biological impairments to set sediment water quality targets for biocriteria listings. EPA and NOAA believe this methodology is credible and establishes an important link between aquatic life use and water quality.

~~However,~~The CZMA, however, requires state agencies, like ODEQ, to develop and submit enforceable policies to achieve CZMA ~~(and CWA)~~ nonpoint source goals. ODEQ has not yet present EPA and NOAA with ~~still needs to develop~~examples of mandatory and enforceable BMPs for the Mid-Coast IR-TMDLs that, when implemented, would result in attainment of applicable WQS. If ODEQ chooses to allow the Designated Management Agencies (DMAs) to develop the BMPs, then ODEQ needs to determine whether the BMPs submitted by the DMAs are adequate and, if not, ~~to require~~would need to develop additional BMPs if DMA actions alone are not adequate to meet applicable WQS. The process ODEQ would use to make this assessment and potentially ~~require~~impose additional BMPs is not clear yet. In addition, it is not clear ~~if~~whether ODEQ would incorporate the DMA--developed BMPs ~~would be incorporated~~ into the TMDL document. If the BMPs are not part of the TMDL document, then the TMDLs would be more representative of traditional TMDLs, rather than IR-TMDLs and likely would ~~likely~~ not enable Oregon to satisfy its Coastal Nonpoint Program condition absent any enforceable measure to ensure that the BMPs developed outside the TMDL process in turn become enforceable.

Comment [N1]: GCOC: Should this be "WQSs," since it is plural?

Comment [k2]: Is it the progress or the info we have received? Or both?

Comment [AC3]: Both

Comment [k4]: "toward"? have they done the 2 things listed or just gotten close to it? If they've done them (as the next sentences indicate), I'm confused as to how they have water quality targets for TMDLs but not TMDLs themselves. Maybe I don't understand what we mean by "water quality targets for TMDLs". I understand that to mean the overall loading capacity of the waterbody; it also could mean "water quality standards" but that doesn't make much more sense given the context.

Comment [AC5]: I defer to the EPA TMDL experts to clarify but it's my understand that they have completed the preliminary steps. They have some wq targets but still lack others.

Comment [k6]: Same comment re: my confusion.

Comment [k7]: And needs to develop the TMDLs themselves, right?

2) ***Will Oregon's Plan for Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area ~~Using~~ Satisfy the Outstanding Additional Management Measure for ~~the~~ Forestry Condition on the State's Coastal Nonpoint Program?***

Comment [AC8]: It's the add MM requirement that OR is conditioned on, not the forestry MMs. OR has already satisfied those but we felt that even though the state met the 6127(g) MMs for forestry, WQ problems were still occurring. Thus, we placed a condition on OR's program requiring them to develop addition MM for forestry (not additional MM for THE forestry condition).

Based on what ODEQ has presented to EPA and NOAA ~~have been presented~~ to date, we do not believe the current IR-TMDL approach is likely to satisfy the outstanding additional management measures for ~~the~~ forestry condition on Oregon's Coastal Nonpoint Program. In the findings of EPA and NOAA's ~~The~~ 1997 conditional approval ~~findings~~ for Oregon's Coastal Nonpoint Program, we noted weaknesses in the ~~s~~State's ability to adequately address impacts from forest~~ry~~ roads, as well as the ~~s~~State's ability to protect riparian and landslide prone areas, among other issues.

Comment [k9]: And NOAA?

Although a conceptual forest road strategy that ODEQ discussed with EPA and NOAA has ~~good~~the potential to satisfy those conditions, ODEQ has not, to date~~, ODEQ has not~~ provided a required road strategy with any measure of ~~that is sufficiently~~ specificity. Key elements of a viable forest road strategy that could address outstanding concerns include, but ~~are~~would not be limited to:

- development of an inventory/assessment to identify where impacts from forest~~ry~~ roads exist;
- development of a reasonable timeline for ~~fixing~~retiring or restoring forest~~ry~~ roads ~~which have~~that cause adverse water quality impacts;
- development of a requirement to track and report on progress ~~made~~ to ~~fix~~remediate identified forest~~ry~~ road problems. Implementation principles for the tracking program c~~w~~ould include addressing the worst road problems or highest risk categories of road problems earlier in the overall timeline as well as milestone-based targets to ensure steady progress on identified road work; and
- identification of effective BMPs for road siting, construction, operation, maintenance, abandoning, and closing to ensure road stability;~~,~~ drainage of road runoff back to the forest floor rather than directly to streams and other waterbodies;~~,~~ and adequate protection of both fish and nonfish bearing streams. This BMP identification and development effort could include establishing targets for the maximum percentage of a road network allowed to discharge directly to streams and other waterbodies, or other similar targets. This identification ~~also~~ should include expectations for periodic monitoring or inspections; to track BMP implementation;, to determine if targets are being met;, to assess BMP effectiveness;, and ~~the~~ to determine whether there is any need to adjust BMPs in the future.

EPA and NOAA are also concerned about Oregon's lack of progress identifying additional management measures for the protection of riparian and landslide prone areas. Oregon Department of Forestry (ODF) is not considering requirements for the protection of riparian areas around nonfish bearing streams in its current riparian rulemaking effort. It is not clear whether ~~that~~ ODF will have developed adequate requirements for the protection of riparian areas around small and medium fish bearing streams through the ODF rulemaking process by the time EPA and NOAA ~~must~~~~has~~have committed to make a final decision on the adequacy of Oregon's Coastal Nonpoint Program.

In addition, ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish bearing streams in the IR-TMDL effort. ~~There is a~~A significant body of science ~~to~~ supports increases in the levels of ~~increased~~ protection ~~of~~afforded to riparian areas around small and medium streams in Oregon. Increased no-cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are currently required on private forest land~~,~~ for similar forest types in the two adjacent coastal states, Washington and California.

~~There are many~~Many practices are available that, in combination, ~~w~~could help Oregon meet the additional management measures for forestry condition by protecting riparian areas, reducing sediment loads, and addressing large wood and stream temperature issues~~.~~ ~~including~~Those practices include, but are not limited to: buffering key segments of nonfish bearing streams that affect downstream water quality above confluences of nonfish bearing streams and fish bearing streams; buffering hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering special aquatic sites such as seeps, springs, wetlands, and beaver ponds. NOAA and EPA recommend that Oregon consider riparian protection approaches similar to those that have addressed Coastal Nonpoint Program requirements in the neighboring coastal states.

Oregon has not yet provided sufficient information regarding additional management measures for landslide prone areas. ODF already requires management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon could also consider adopting ~~requirements~~measures similar to the State of Washington's "Forests and Fish" rule provisions for protection of landslide prone areas.

A viable program for the protection of Oregon's landslide prone areas c~~w~~ould include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors should be used in the designation. Landscape scale mapping and analysis tools (e.g., LiDAR and DEMs) could help focus risk identification and designation efforts. An array of BMPs, including no harvest and thinning at various levels to maintain root strength and reduce precipitation impacts on soils, could be required in high risk areas based on factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon also may wish to consider an option to provide flexibility for forest land owners to ~~utilize~~rely on certified geologists or engineers to develop BMP options that provide equal or greater protection than the more broadly required measures. The program that Oregon develops to address landslide prone areas ~~must provide~~needs to address an adequate protection for both fish and nonfish bearing streams.

3) *Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program*

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July ~~21~~26, 2010 letter to EPA and NOAA, ODEQ committed to completing actions according to the interim milestone deadlines identified by EPA and NOAA or as modified by ODEQ. The deadlines identified by EPA and NOAA include: a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for DMAs by June/July 2011. However, ODEQ has not met any of those commitments nor modified the deadlines. ~~yet to finalize the guidance and~~ Although ODEQ shared with EPA and NOAA a ~~"final"~~what the State has prepared as ~~draft of~~ the guidance, entitled *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* (Implementation Guidance), that ~~"final"~~ draft, as EPA and NOAA notified ~~told~~ ODEQ in our July 2012 comments, ~~EPA and NOAA reviewed and commented on in July 2012~~ still ~~warranted~~needed additional, ~~needed~~ significant work.

Comment [AC10]: The state referred to the draft as the Final Draft as opposed to earlier drafts we reviewed. However, it was very clear their "final" draft was no where near being final. I prefer to keep the "final" language to clarify which draft we are referring too.

While EPA and NOAA have been supportive of the potential for this Implementation Guidance approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on our review of the July 2012 ~~"final"~~ draft of the Implementation gGuidance, it is still unclear whether the TMDL Implementation Plans developed under this gGuidance ~~need to~~would include practices consistent with the mManagement mMeasure ~~6217(g) management measure~~ for new development identified by the federal agencies under the Coastal Zone Act Reauthorization Amendments, as well as ~~and~~ whether ODEQ even has the authority to require implementation of the new development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). ~~This gives us concern that this~~The ~~TMDL~~ Implementation ~~Plan~~ Guidance for urban areas ~~may~~might not enable Oregon to satisfy ~~its~~the new development ~~condition~~management measure condition.

Comment [AC11]: See earlier comment

Comment [k12]: Just trying to use the defined term provided.

As ODEQ finalizes ~~this g~~the Implementation Guidance, it should ~~needs to make sure the Implementation gGuidance provides~~provide unambiguous instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their TMDL Implementation Plans ~~[~~(i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels)~~]~~. The federal agencies will review the Implementation gGuidance to ensure that it ~~also needs to~~ clearly indicates that ODEQ can ensure implementation of the new development management measure, as needed.

Based on staff communications, EPA and NOAA had understood that ~~It was our understanding that~~ the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the

recommended new development management measure. While states ~~can use~~may rely on voluntary approaches~~,~~ backed by enforceable authorities~~,~~ to meet their Coastal Nonpoint Program requirements (see the EPA NOAA 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 ~~"final"~~ draft Implementation Guidance appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution. ~~-~~We urge ODEQ to resolve this apparent discrepancy.

EPA and NOAA hope ODEQ will expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure, as needed, implementation of these practices~~, as needed~~. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review as soon as possible so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

Comment [AC13]: See earlier comment.

4) *Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program*

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point-of-sale inspections for systems within the Coastal Nonpoint Program management area. EPA and NOAA applaud Oregon's progress on rule development and the fact that ~~it~~Oregon was on target for meeting benchmarks set out in its July 21, 2010, commitment letter. The proposed rules require all OSDSs within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The ~~s~~State has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point-of-sale inspections and reliance on qualified inspectors, combined with the ~~s~~State's detailed inspection form, should enable the ~~S~~state to satisfy ~~its~~the OSDS condition if ~~when~~ adopted substantially as proposed.

Comment [k14]: In the first sentence here, said Oregon has "proposed to develop rules". Have they actually proposed a rule (i.e., published for notice and comment) or are they just conceptual at this stage?

Comment [AC15]: They have been formally proposed and out for public comment. That's when the legislators provided comments that they are discussing with them now.

Comment [k16]: Same comment.

Comment [k17]: Assuming that they're adopted as proposed? We should caveat here to make sure we're not stuck later. I see the caveat in the last sentence of the next paragraph but that might be too far away.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon Environmental Quality Commission (EQC) for adoption until March 2013 to give ODEQ more time to discuss the proposed rules with several ~~s~~State legislatorsures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. ~~-~~If the date for final action is ~~so delayed, ; if so,~~ EPA and NOAA may lack sufficient time and opportunity ~~likely will not be in a position~~ to approve Oregon's Coastal Nonpoint Program by November 15, 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy ~~its~~the remaining OSDS condition.

Comment [k18]: Same comment as above.

Comment [k19]: Are they consulting with other states?

Comment [AC20]: No. Just a few OR state legislators. Good catch on the typo!

Comment [k21]: Same comment as above.

Comment [k22]: In the cover letter we say June 30, 2013; why the discrepancy?

Comment [AC23]: OR has said they will present to EQC in March now. The EQC meets quarterly so I believe that would mean their next meeting would be in June—may be cutting it a bit close. We just want to support the new deadline OR has proposed to us to give them more cover in the state.

Comment [k24]: Same comment as above. I'm just flagging all of these so that we can fix them if needed based on my question above.